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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 KENNETH KING, et al.,

4 Plaintiffs,

5 v.

14 CV 7694 (JFK)(JLC)

6 SHOU-KUNG WANG, et al.,

7 Defendants.

8 -----x

New York, N.Y.  
March 4, 2019  
11:05 a.m.

9  
10 Before:

11 HON. JAMES L. COTT,

12 Magistrate Judge

13 APPEARANCES

14 SAM P. ISRAEL, P.C.

15 Attorneys for Plaintiffs

16 BY: TIMOTHY SAVITSKY

17 KASOWITZ BENSON TORRES & FRIEDMAN LLP

18 Attorneys for Defendants

19 BY: KIM CONROY

20 THOMAS B. KELLY  
21  
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23  
24  
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(Case called)

MR. SAVITSKY: Timothy Savitsky, from the firm Sam P. Israel, on behalf of the plaintiff, Yien-Koo Wang King, in 14 CV 07694, and for Kenneth King, Raymond King, and Yien-Koo King, as defendants in 18 CV 08948. Good morning, your Honor.

THE COURT: Good morning, Mr. Savitsky. Where is Mr. Israel?

MR. SAVITSKY: Your Honor, Sam is pretty seriously ill. I've been working at the firm for five years, and I've never seen him miss the amount of work that he's missed over the past three weeks. I think he's been in eight days, never for the full day, and they don't know -- he doesn't know exactly what is wrong with him. He's on medications, but they just don't know what the situation is.

THE COURT: I'm sorry to hear that.

MR. SAVITSKY: He does apologize, and if he could come in, he absolutely would, but I'm prepared to discuss these issues with your Honor.

THE COURT: Okay.

Back table, please?

MS. CONROY: Kim Conroy and Thomas Kelly, Kasowitz Benson Torres & Friedman, for the defendants.

THE COURT: Okay. Why don't you be seated.

I'm a little concerned and a little frustrated, frankly, about the state of play right now. Let me review

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1 what's happened, and then you all can correct me if I have  
2 misstated this. Judge Keenan consolidated discovery in the two  
3 lawsuits back in November. At that time, he stayed deposition  
4 discovery in the second action, but he did not stay document  
5 discovery. We discussed that at some length at our last  
6 conference, in January, on the 18th. At that time, Mr. Israel  
7 indicated that he was going to essentially seek further review  
8 from Judge Keenan of that ruling, because he believed he had a  
9 meritorious motion to dismiss the second action, and that  
10 discovery of any kind should not proceed related to that.

11 But, of course, he didn't then make an application to  
12 Judge Keenan until last night, at 10:42 p.m., and I assume,  
13 Mr. Savitsky, that was your application, not Mr. Israel's,  
14 given that he has been taken ill, which, again, I'm sorry to  
15 hear, and that may explain a little bit of the timing here.  
16 And if that's the case, by the way, you should never hesitate  
17 to advise the Court and your adversary that you have a  
18 situation here where lead counsel is unavailable. I mean,  
19 people have lives to lead, and if people have personal  
20 situations, we'll deal with them. For example, if he could  
21 have participated today if we had done this conference by  
22 telephone, for example, I would have been happily willing to  
23 rearrange. So in the future, we can do that if that's a way to  
24 get him involved, because, obviously, he's going to need to be  
25 involved in these things.

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1 But the application for a stay was not filed until  
2 late last night, so I've barely had a chance to even review it.  
3 I'm sure Ms. Conroy and Mr. Kelly have, if even seen it, only  
4 barely had a chance to review it, and it can't realistically be  
5 something that the Court can properly consider today. Frankly,  
6 I'm not sure that it is something that is before me. I  
7 believe, frankly, it is before Judge Keenan until he tells me  
8 otherwise, because what the King parties, I'll call them, are  
9 seeking is a review of Judge Keenan's decision. And I can't  
10 review Judge Keenan's decision, only Judge Keenan can review  
11 Judge Keenan's decision. But, meanwhile, it's very clear that  
12 the mere application for a stay doesn't get you a stay, but it  
13 seems to me, Mr. Savitsky, you all have been operating under  
14 the assumption that because you were thinking about making a  
15 stay application, and now you've made it, somehow you are  
16 precluded from responding to any document discovery requests in  
17 the second action. That's clearly not true.

18 Now, if the requests are burdensome, as it suggests in  
19 the papers that they are, 1100 search terms, 73 broad document  
20 requests, it's one thing to say I'm not going to respond  
21 because I'm going to make a stay application. That's not  
22 permissible. It's another thing entirely to say, Judge, a  
23 thousand of the 1100 search terms are burdensome,  
24 inappropriate, irrelevant, or whatever, but that's what you all  
25 need to do.

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1           Now, here are a couple of other things that give me  
2 concern:

3           When the King parties filed their motion to dismiss in  
4 the second action, that would have been a logical time to, as  
5 point 4 of the brief in that memo say, because the motion is  
6 meritorious, there should be a stay, and Judge Keenan should  
7 revisit it. That would have been three weeks ago, and that  
8 wasn't done.

9           And then, when the Wang parties filed their first  
10 amended complaint and asked for more time to respond to your,  
11 I'll call it, reinstate the motion to dismiss, they now have  
12 until March 22nd to respond. You undoubtedly are going to want  
13 to reply. So the motion is not going to be even fully  
14 submitted before Judge Keenan until early April, and we're  
15 operating on a schedule now of a fact discovery deadline of  
16 May 8th. And we're operating under that deadline, in part,  
17 because the first lawsuit was filed in 2014, so it's five years  
18 old, and we're dealing with parties who are octogenarians, so  
19 this is not a case that we should be litigating at a leisurely  
20 pace. And I am going to be disinclined to extend discovery  
21 deadlines in this case, because this case needs to move  
22 forward.

23           I think everyone is moving more slowly than they  
24 realize they need to be because you're going to run out of  
25 time. I'm not going to extend this for three or six more

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1 months for more document discovery. This was not well thought  
2 out in a lot of ways. And I'm not blaming just the King  
3 parties here, because I, frankly, don't understand why the  
4 Wangs' 2018 action warrants counterclaims in the 2014 action.  
5 And I know Kasowitz wasn't in the case in 2014, but that  
6 doesn't really matter, for purposes of a case management  
7 assessment, of what's going on here.

8           So, frankly, the way I see everything today is the  
9 case has become a mess in the last month since we were last  
10 together because all you all are doing is litigating this like  
11 some big commercial dispute, leisurely, not recognizing that  
12 schedules mean schedules, deadlines mean deadlines, and if  
13 you're going to seek a ruling, for example, from Judge Keenan  
14 after our January 18th conference, you don't file papers on  
15 March 3rd, and you don't file papers in a 16-page memorandum of  
16 law and all this other stuff. You get it before the Court  
17 quickly, so the Court can act quickly, and that didn't happen  
18 either. Now, maybe, in part, because of Mr. Israel's illness,  
19 and I'm sorry if that's part of the reason, but that wasn't  
20 presented to the Court, so I'm not aware of that, nor is Judge  
21 Keenan, until what you've just represented now in that regard.

22           So I'm, frankly, concerned taking the overview of  
23 everything before we get into the nitty-gritty. I mean, the  
24 defendants, in the first action, have given me a litany of all  
25 sorts of things that haven't been produced, but I don't know

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1 how to analyze all of that in the broader context we're dealing  
2 with here.

3 So, Mr. Savitsky, do you want to be heard in regard to  
4 what I have just said?

5 MR. SAVITSKY: Yes, your Honor. There is something  
6 very important about the record that I need to correct.

7 One of the main reasons why we waited to file our  
8 motion to stay is because we did not receive the first set of  
9 document demands and the first set of interrogatories in the  
10 defendants' affirmative case until February 12th.

11 THE COURT: What difference does that make?

12 MR. SAVITSKY: Because in order to do the analysis for  
13 a motion to stay, the scope of the document demands and  
14 interrogatories are one of the three critical issues that are  
15 involved. It's the defendants' position that they have certain  
16 document demands and interrogatories in the original action  
17 because they go to their defenses, and then they have their  
18 interrogatories and document demands in their present action,  
19 which they served two weeks ago, and they're not due yet. That  
20 is another point, your Honor. Their letter -- the first four  
21 pages of their letter --

22 THE COURT: Are about things that are not due yet?

23 MR. SAVITSKY: -- are not due yet, and it's premature,  
24 we haven't issued a response yet, and they did not indicate  
25 that in their letter at all.

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1           So it is, in part, because one of the three prongs was  
2 what their document demands and interrogatories were in scope,  
3 and we waited to receive those, we did receive those, and then  
4 we filed within two weeks.

5           The other point, your Honor, the other issue with  
6 Sam's sickness: We have four barred attorneys in our firm.  
7 Every case that our firm runs runs through Sam, so he needs to  
8 be there operating everyone's cases. So when he's out, it  
9 creates a chain reaction where we're behind on everything. We  
10 have other cases, too.

11           We filed the motion to stay on Sunday because we were  
12 working on it Saturday, I was working on it Sunday, we're  
13 working on other things during the week. We're not trying to  
14 delay, your Honor, we are working very hard. I understand your  
15 concern completely, but the record needs to be clear that we  
16 didn't receive their first set of document demands in the  
17 affirmative case until two weeks ago.

18           THE COURT: Well, why, for example, after the  
19 January 18th conference, has there been no progress on the  
20 protocol we discussed about the defendants, at their cost,  
21 retaining a vendor and copying all the surrogate court papers,  
22 so that all parties had a unified group of documents? Why is  
23 that something I'm even seeing anything about in the papers  
24 today?

25           MR. SAVITSKY: Your Honor, I just think it appeared to



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1 be a miscommunication. At our meet-and-confer, which was the  
2 first time that we had addressed this issue since the  
3 conference, apparently, the defendants' counsel thought that  
4 they were waiting on us to give them a green light, and we were  
5 waiting on them to tell us when they wanted to come in to  
6 collect the documents.

7 THE COURT: Have you worked that out now?

8 MR. SAVITSKY: We have. I've already given them a  
9 date for Thursday.

10 THE COURT: All right.

11 MR. SAVITSKY: And we'll be getting -- Mr. Cohen, from  
12 the Kamerman Uncyk Soniker & Klein firm, which has also  
13 appeared in this action, we will be getting their paper, which  
14 we haven't gotten yet, they will be scanning our papers, and I  
15 think that's resolved.

16 THE COURT: Okay.

17 Mr. Kelly or Ms. Conroy, do you want to be heard  
18 preliminarily about the gestalt of the situation here?

19 MS. CONROY: I understand, your Honor. I understand  
20 the frustration.

21 If I could just say, as to the representation that  
22 these categories were first made known to plaintiffs, that's  
23 actually not true. A lot of these categories, most of these  
24 categories, your Honor, were, in fact, included in our first  
25 requests months ago. And during our January 18th conference,

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1 if you recall, it was a long conference, your Honor wasn't  
2 feeling well, they had taken the position at that conference  
3 that they weren't going to talk about categories that relate --  
4 that overlapped with defenses in our affirmative action, and I  
5 had put on the record, I said, your Honor, in light of the fact  
6 of your ruling that you weren't going to allow the stay because  
7 they had requested it last time too, you weren't going to allow  
8 the stay, I thought it was prudent to allow the parties time to  
9 meet and confer since we hadn't before January 18th, given  
10 their position about asking for the stay.

11 Your Honor agreed with that, that that was prudent.  
12 Thereafter, they took this position then again, and no progress  
13 has been made on those categories.

14 THE COURT: Well, is it true that their responses to  
15 your document requests are not due until March 15th?

16 MS. CONROY: It is true that we served another set of  
17 requests, and that is true that it's not due. To that point,  
18 though, on our meet-and-confer, because so many of the  
19 categories overlap with our first requests, I specifically said  
20 I understand your responses aren't formally due, but to the  
21 extent there's overlap, we should at least meet and confer  
22 about the categories that we can find some agreement on in as  
23 far as they were asked for in the first action, and they  
24 wouldn't have any meet-and-confer with us at all.

25 THE COURT: Well, how many document requests have you

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1 served in the 2018 action?

2 MS. CONROY: There were a number. However, given the  
3 last time -- given the conference on January 18th, and your  
4 Honor made a very good point that people put in numerous  
5 amounts of requests, but the better part of valor is to get on  
6 the phone and try to work that out. So what I tried to do in  
7 advance of our meet-and-confer is I sent counsel a limited set  
8 of categories and said, okay, here are the actual categories  
9 we're looking for. Those are the categories I've now submitted  
10 in our letter submission in advance of this conference.

11 THE COURT: Well, look, I want to be productive here  
12 today, but I also want everybody to be mindful that  
13 notwithstanding Mr. Israel's illness, about which I'm  
14 concerned -- and I'm concerned about his health more than I'm  
15 concerned about the case, frankly -- we have a May 8th deadline  
16 in this case, and we set a March 15th document deadline, and  
17 when courts set deadlines, either Judge Keenan's May 8th  
18 deadline or my March 15th deadline, we don't just set deadlines  
19 randomly, we set them because that's how cases have to be  
20 managed and controlled.

21 I want to honor those dates. I don't want to just  
22 push things back unless there's some very good reason to do so.  
23 Frankly, as far as the motion to dismiss the 2018 action is  
24 concerned, I don't see how Judge Keenan, frankly, is going to  
25 resolve it before fact discovery is concluded in the two cases,

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1 given the timeline you all put it on. I mean, that's not fair  
2 to Judge Keenan, frankly. He's supposed to drop everything  
3 else, and the day after your motion is fully submitted after  
4 your reply papers are in on April whatever, then the next day,  
5 they turn to it in his chambers? I don't think so. That's not  
6 generally how it works. It's not an order to show cause. Even  
7 if they move quickly on it, they're likely to take whatever  
8 time they need to take on it, and then we're going to be past  
9 the fact discovery deadline. I think we have to be pragmatic  
10 about what you all are going to have to work with when you take  
11 your depositions, if you want to take depositions, because, as  
12 in all cases, you want to have a treasure trove of documents.  
13 This case is 20 years old. You all already have a ton of  
14 documents.

15 So I'm going to navigate with you the best I can now,  
16 and maybe at one more conference, the remaining issues that  
17 we're going to deal with related to document discovery, but  
18 after that, you're going to be left to your own devices, it  
19 seems to me. I'm not willing to move the goalpost down the  
20 field until August, or November, or something for this case.  
21 I'm just not. It doesn't make sense to me.

22 We have to accommodate certain things, yes. Kasowitz  
23 is new to the case, not so new anymore. That's a fact that we  
24 will accommodate. And Mr. Israel has been ill, I'm certainly  
25 happy and willing to accommodate that, and I certainly hope

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1 it's not serious, but we have to deal with things as they are  
2 presented. And, as I say, this is the first that I am hearing  
3 about that. So I don't have any basis to accommodate that  
4 until applications are made in that regard.

5 I think we should proceed with whatever disputes that  
6 are raised in the letters today to the extent we can, but I  
7 have to be clear that until Judge Keenan stays document  
8 discovery in the 2018 case, there is no stay, and/or he refers  
9 it to me to revisit his earlier decision, which I wouldn't  
10 think he'll do, but if he does, that's fine, and I can revisit  
11 it, I suppose, but what I'm more focused on is whether the  
12 document requests that are outstanding are overly broad, are  
13 overly burdensome, or what have you. That's something that's  
14 more easily scrutinized by the Court, and mindful that at least  
15 some of them are not due yet, although there is overlap. But  
16 like I said the last time, lawyers can, in a case like this,  
17 probably come up with a thousand document requests, but what's  
18 really important is what are the core documents you really  
19 need, both sides.

20 My job is, frankly, to ensure that both sides have the  
21 core documents, so the playing field is as level as possible,  
22 not things on the margins, especially parties who have been  
23 litigating against each other for as long as they have been.  
24 You all already have a lot of documents, so it's hard to know  
25 where to draw lines. For today's purposes, when there are some

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1 document requests that are not even due yet, but then they  
2 overlap with some that are overdue and haven't been responded  
3 to, it's a little bit that the defendant is premature in some  
4 respects and the plaintiff is delinquent in other respects. So  
5 where does that twain meet? I don't know.

6 So then we have to get into the weeds, I think,  
7 because I don't know any other way to do this, other than to do  
8 it in some concrete way rather than just talk abstractedly  
9 about all of this. And I suppose we can go through some of the  
10 list that is in the Kasowitz letter that was sent to the Court  
11 last week, although I understand that some of those requests  
12 really are premature to consider. But that's the only thing I  
13 can suggest we do in that regard today. There's some more  
14 discrete issues that have been raised in the parties' letters  
15 as well that I'm happy to deal with.

16 So, unless you have other suggestions as to how to  
17 proceed.

18 MR. SAVITSKY: No, your Honor. I think that makes  
19 sense.

20 We only have two issues in our papers --

21 THE COURT: Yes. We'll deal with yours because they  
22 are very discrete, and maybe we'll deal with them first, and  
23 then we'll deal with Ms. Conroy's and Mr. Kelly's letter and  
24 requests sort in light of the totality of the circumstances  
25 here to figure out how to best navigate with them. Let's deal

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1 with the issues that are raised in your letters first.

2 MR. SAVITSKY: Thank you, your Honor.

3 The first issue we have is that there is an entity  
4 called the Shou-Kung Wang Irrevocable Trust that was created in  
5 2013. We know it purchased a \$6 million parcel of land on Long  
6 Island in 2013. And we received the trust agreement, the  
7 original trust agreement, but the schedule of assets on the  
8 trust agreement, which is the things that are held in trust and  
9 the reason why the trust agreement comes into existence in the  
10 first place, has just blanks where the numbers of assets are  
11 and the letters. So it's subdivided into 1, 1-A, 2, 3, 4, and  
12 then it's just blanks.

13 THE COURT: Blanks as in they were redacted or blanks  
14 as in there was never anything there, if you know?

15 MR. SAVITSKY: Your Honor, I would say, based off of  
16 my experience and our firm's experience, almost certainly  
17 redacted because a lawyer would not draft a 32-page trust  
18 agreement, have the clients come in and sign the trust  
19 agreement, and not put assets in the trust because, your Honor,  
20 there is no trust without assets, it's void. And they need to  
21 be put it in at the time the document is executed.

22 So I absolutely am not in any way accusing the  
23 Kasowitz firm of redacting anything on those pages without  
24 indicating that information was redacted, but it's beyond  
25 reasonable to assume that this critical evidence, which we

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1 believe has some of the self-dealt works because some of them  
2 are highly valuable, and they were put into an irrevocable  
3 trust by these two RICO defendants, that it was just blank when  
4 it was drafted. It's as if you were getting a copy of  
5 someone's Social Security card or driver's license in  
6 discovery, and there's a big white box where the Social  
7 Security number should be or where the person's name on the  
8 driver's license should be, and them saying, well, no, that's  
9 just how it was issued to me, I never really got a Social  
10 Security number, I just got the card. To have a trust  
11 agreement and to have 1, 2, 3, 4, 1-A, 2-B on that schedule of  
12 assets, but then just blank, it's irrational to think that's  
13 how it was made.

14 THE COURT: Who wants to be heard?

15 MS. CONROY: Your Honor, we went over this last time.  
16 I don't know if you recall.

17 THE COURT: This very schedule?

18 MS. CONROY: This very schedule. They asked for this  
19 exact relief last time, and your Honor ruled on this exact  
20 relief.

21 THE COURT: I don't recall that it was this exact  
22 schedule.

23 MS. CONROY: It was the same, your Honor. It was the  
24 same trust document. They had accused us of initially  
25 redacting. We confirmed they hadn't been redacted. We also



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1 went back to our client, confirmed it was the only copy in  
2 their records. Counsel last time came here and made the exact  
3 same arguments and requested the exact same relief, that they  
4 see the original, and your Honor said counsel for defendants is  
5 making the representation, I believe them, they produced a copy  
6 in the files.

7 THE COURT: Well, it can't be that this schedule had  
8 nothing listed.

9 MS. CONROY: The copy that we have, your Honor, that  
10 our clients have, there is nothing listed. We produced the  
11 exact document that is in his files. That is what we got.  
12 We --

13 THE COURT: Who generated the trust agreement in the  
14 first place?

15 MS. CONROY: It's an attorney by the name of Mr. Nudo,  
16 who counsel is aware of.

17 THE COURT: An attorney by the name of?

18 MS. CONROY: Nudo.

19 THE COURT: How do you spell the last name?

20 MS. CONROY: N-u-d-o.

21 THE COURT: Mr. Nudo?

22 MS. CONROY: Yes.

23 THE COURT: Have you reached out to Mr. Nudo?

24 MS. CONROY: We did.

25 THE COURT: What is his explanation for why this

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1 schedule has --

2 MS. CONROY: He has not returned our phone calls, your  
3 Honor.

4 THE COURT: He has not returned your phone calls?

5 MS. CONROY: He has not returned our phone calls.

6 THE COURT: Third-party subpoena to Mr. Nudo,  
7 Mr. Savitsky?

8 MR. SAVITSKY: Your Honor, we've looked into Mr. Nudo,  
9 and we found two things: One, we found that his PO box -- he  
10 has a PO box listed for his address, and I'm not certain he's  
11 still practicing law anymore. We know that in 2015, he was  
12 censured by the Second Department for doing something with an  
13 affidavit and signing it. I believe the Second Department's  
14 decision was that it was a fraud. I don't know if he got his  
15 license revoked, but I know he was publicly censured, and I  
16 can't find any active address for him as a practitioner of law,  
17 and that's where our issue is with serving him right now.  
18 But --

19 THE COURT: What is his full name, Ms. Conroy? Do you  
20 know his first name?

21 MS. CONROY: Not off the top of my head, but I'm happy  
22 to get it. I think it's Nicholas, but I could be wrong.

23 MR. SAVITSKY: I think that's correct.

24 THE COURT: So you haven't made an attempt to serve a  
25 third-party subpoena on him?

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1 MR. SAVITSKY: Not on his PO box, so, no, we haven't.  
2 We've been, for the past week and a half, looking for his  
3 address, a personal address for him, but I haven't found one  
4 yet, your Honor.

5 THE COURT: Well, if the current defense counsel asked  
6 their client for the document that you have, and they have  
7 produced it, and they're representing that to the Court as  
8 officers of the Court that that's what they have and that's  
9 what they've produced, there are certain arguments and  
10 inferences you can make as a result of the state of the record,  
11 which are, frankly, in your favor, if you follow me, in some  
12 ways. So the record, as it is, suggests that the Wangs may  
13 have some problems with respect to the state of this document,  
14 right?

15 MR. SAVITSKY: We believe if we're not able to inspect  
16 the original, that we're entitled to an adverse inference.

17 THE COURT: Right, you're going to make such an  
18 argument. So I'm sure counsel for the Wangs probably are not  
19 particularly happy that this is the state of the record either.

20 In a way, be careful what you wish for, because maybe  
21 the record is better incomplete as it is for your purposes than  
22 it would be if you tracked down the original through Mr. Nudo,  
23 since the Kasowitz firm doesn't have some other version of this  
24 that they're withholding.

25 MR. SAVITSKY: Absolutely.

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1 THE COURT: And if their client has some other version  
2 of this that they're withholding, what is a lawyer to do if the  
3 client says this is all I have? If they're not telling their  
4 own lawyer what they have, there's only so much you can do, as  
5 you know, right?

6 MR. SAVITSKY: There is, your Honor, but if it's shown  
7 that this document likely -- if you meet the elements for  
8 spoliation and show the document likely exists, whether he  
9 destroyed it and he had control over it, then we just want to  
10 be clear that they're under an obligation to produce the  
11 original. And this is the distinction -- let me clarify. It  
12 was their position, the last time we discussed this, that they  
13 don't have any obligation to produce the original. That is  
14 different from them saying, we don't have the original and  
15 we've given you everything we have. So we just --

16 THE COURT: That's what Ms. Conroy just said.

17 MR. SAVITSKY: Today, yes, your Honor.

18 But this issue was raised because when we spoke about  
19 it, it was, no, we don't need to produce the original, not that  
20 we have the original or Mr. Nudo has the original, and we're --  
21 I'm sorry, let me clarify that. There's a difference between  
22 saying we don't have an obligation to produce the original and  
23 we don't have the original. What I'm hearing today is that  
24 there is no original that they have any control over, he just  
25 has the copy, even though he's the trustee of that trust, is

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1 the settler.

2 THE COURT: You mean Mr. Wang?

3 MR. SAVITSKY: Mr. Wang and his father, correct.

4 Andrew Wang, the son, is the trustee of this trust, and S.K.  
5 Wang is the settler of the trust.

6 THE COURT: Are you going to depose Andrew Wang in  
7 this case?

8 MR. SAVITSKY: We do plan, absolutely.

9 THE COURT: Are you going to ask him about this  
10 document?

11 MR. SAVITSKY: We will, your Honor.

12 THE COURT: So that's the state of the record. And  
13 you will explore it further and either choose to serve a  
14 third-party subpoena or you won't. But the record before the  
15 Court today from Ms. Conroy is: They do not have an original,  
16 they have produced what they have and what they have gotten  
17 from their client. Is that correct?

18 MS. CONROY: Yes, your Honor.

19 THE COURT: All right.

20 So I think the book is closed on this for my purposes  
21 today. Not for your purposes in the lawsuit, but for my  
22 purposes today, there's nothing further to discuss.

23 MR. SAVITSKY: That clarifies everything, your Honor.  
24 Thank you.

25 MS. CONROY: And just for a hundred percent clarity of

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1 the record, if for some reason we identify or locate an  
2 original, we'll let counsel know. We're not hiding anything.

3 THE COURT: Not only let him know, you will produce  
4 it.

5 MS. CONROY: If we have it.

6 THE COURT: Well, you've said you don't have it.

7 MS. CONROY: We don't have it.

8 THE COURT: So why are you complicating the record and  
9 saying something that you have a legal obligation anyway to do?

10 MS. CONROY: Sorry, your Honor. Understood.

11 THE COURT: That would make Mr. Savitsky and me,  
12 frankly, a little suspicious. So don't say stuff like that.  
13 You've represented you don't have it, period. If you have it  
14 at some point, because it falls out of the sky, you're going to  
15 produce it. Okay?

16 MS. CONROY: Yes. I was only referring to if we hear  
17 back from Mr. Nudo. We've been trying to get a hold of him.  
18 That's my only reference.

19 THE COURT: If you reach Mr. Nudo, and he has the  
20 original, and he gives it to you, you will produce it.

21 MS. CONROY: Yes.

22 THE COURT: Okay. Next.

23 MR. SAVITSKY: The next very discrete point that we  
24 have is that there are two corporate B.V.I. -- two offshore  
25 corporations, they're British Virgin Islands companies. One is

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1 called Le Style Ltd., and the other is called Le Tao Ltd. Le  
2 Tao Ltd., we know, was the entity which transferred the initial  
3 funds to purchase that \$6 million house that went into the SK  
4 trust, and it was signed -- there was a wire signed by Andrew  
5 Wang, money comes in from overseas from HSBC in Hong Kong, I  
6 think it was \$600,000, from this entity called Le Tao Ltd.  
7 signed by Andrew. We have the wire instruction. That comes  
8 in. And there is another entity called Le Style Ltd., and this  
9 entity, in 2009, wired \$500,000 into the estate of CC Wang --  
10 that's who the estate of YK represents -- for the purchase of  
11 paintings, the paintings that we argue are self-dealt.

12 And we believe that Andrew and his father, Shou-Kung  
13 and Andrew Wang, own Le Style Ltd. They admit they own Le Tao,  
14 but we also believe they own Le Style Ltd., which is the entity  
15 that paid for the artwork that we claim are self-dealt. And  
16 we've asked for business records, the incorporation documents,  
17 anything, on Le Style Ltd. and Le Tao Ltd., and the response  
18 that we've gotten -- and this is similar, I think, to the SK  
19 trust, but I'll just go through it -- the response that we've  
20 gotten is to the extent we find anything in our clients' files,  
21 we'll produce it. Le Style Ltd., in my opinion, your Honor,  
22 it's the single most important thing in this case because if  
23 you can prove that he owned the company, which paid for the  
24 estate's artwork, when he was the fiduciary of the estate,  
25 without disclosing that, he self-dealt. It's just a

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1 documentary evidence chain of self-dealing.

2 We need to find out what documents he has in Le Style  
3 Ltd. We know he owns Le Tao, he admits it. It's whether or  
4 not he owns Le Style, and we don't think the response of, well,  
5 to the extent we have any documents about Le Style's  
6 incorporation, we'll produce them is sufficient because, your  
7 Honor, they have an obligation to reach out to the B.V.I. trust  
8 company that they use.

9 THE COURT: That's this Portcullis?

10 MR. SAVITSKY: Exactly.

11 They hired a trust company -- and this is a big thing  
12 that happens in the B.V.I. You get a trust company to do your  
13 transactions and sign your documents in the British Virgin  
14 Islands, so your name doesn't appear on the transactions. It's  
15 Portcullis who's acting as trustee. Andrew Wang does not have  
16 to sign for certain documents.

17 THE COURT: How are you aware of Portcullis?

18 MR. SAVITSKY: Because the International Consortium of  
19 Investigative Journalists released the Panama papers -- you may  
20 have heard of this -- and that there was a -- this group is  
21 responsible for publishing a database on thousands of offshore  
22 companies and their owners. On their database, which I think  
23 was published in 2013, but I'm not certain about this, they  
24 report that a company called Le Style Ltd. was incorporated on  
25 August 2, 2006, by Mr. Andrew Wang and Mr. Shou-Kung Wang.



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1 They're both co-owners and co-officers of this company that  
2 paid for the estate's artwork. It's the whole --

3 THE COURT: What's that connection to Portcullis?

4 MR. SAVITSKY: Portcullis is the entity which holds  
5 the records in trust for Andrew. So if Andrew says I don't  
6 have Le Style records, I don't have Le Tao records, well,  
7 Portcullis would because they are the trust entity in the  
8 British Virgin Islands who does all their administrative  
9 operations.

10 THE COURT: But what control do the Wangs have over  
11 Portcullis? You're saying Portcullis is effectively their  
12 agent?

13 MR. SAVITSKY: Exactly.

14 THE COURT: I see.

15 MR. SAVITSKY: They are their hired agent. Like I  
16 said, this is a common practice in the British Virgin Islands,  
17 to have a trust entity. The way to get the records, which we  
18 hope not to do, is to move in the British Virgin Islands for an  
19 order compelling the production of those, but there's obviously  
20 a lot of expense to that, there would be a lot of hurdles, and  
21 Andrew should just have these records, and he should have -- he  
22 does, in fact, have control of them.

23 So our issue is, which is what's different from the  
24 original trust issue, is that the response we've gotten from  
25 the defendants is, we'll produce what we've got, what's in our

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1 files, but I can look through and say, oh, I've got Le Style or  
2 I've got Le Tao's records, but that's not good enough because  
3 they have an obligation to go to their trust agent in the  
4 British Virgin Islands and say we need these records because  
5 it's under their possession, custody -- or custody and control.  
6 They have a legal right to those records, and they have the  
7 practical ability to acquire them.

8 THE COURT: Were there no documents related to  
9 Le Style produced in the Surrogate's Court action?

10 MR. SAVITSKY: We did not know about Le Style until  
11 very recently. The only documents that we have that were  
12 produced in relation to the Surrogate's Court is a -- which was  
13 produced recently in this action, actually, but it related to  
14 the Surrogate's Court action. The wire records from Le Style  
15 to the estate on this contract with -- his name was -- on the  
16 contract was Mr. Yue Da-Jin. It's our position that person  
17 doesn't exist; it's just a name on a contract. So then we  
18 looked at who paid for Yue Da-Jin's paintings that got shipped  
19 to Hong Kong, and it's a company called Le Style Ltd. That  
20 company is owned by Andrew Wang and Shou-Kung Wang.

21 THE COURT: Okay.

22 Ms. Conroy or Mr. Kelly?

23 MS. CONROY: Your Honor, they asked for the  
24 incorporation documents. We said, yes, we'd produce them.  
25 This is the first time in the letter to you that they ever

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1 raised Portcullis to us. Literally, their letter to the Court  
2 is the first time, I mean, they've even raised that company's  
3 name.

4 On our meet-and-confer, they just asked when are we  
5 producing? I said we'll produce before the deadline. So, as I  
6 hear the request right now, it's see if you have the  
7 incorporation documents, and if you don't, put a request out to  
8 Portcullis, which I'm fine to do, but I can't confirm his  
9 representation that we automatically own this company or not.  
10 I didn't know about the relationship with it until they raised  
11 it for the first time.

12 THE COURT: Okay. But you're prepared to reach out to  
13 Portcullis, as necessary, to produce incorporation documents if  
14 you can't produce a full set of them on your own?

15 MS. CONROY: Sure.

16 THE COURT: So I don't think there's a dispute, then.

17 MS. CONROY: No.

18 MR. SAVITSKY: Not anymore, your Honor. Thank you.

19 THE COURT: Okay. But you don't need to come to court  
20 and make a speech, so Ms. Conroy hears it in a letter and then  
21 in court. You all need to talk to each other before because  
22 she'll say, okay, Portcullis, it's an agent, I get the  
23 argument, we have certain obligations that we're responsible  
24 for tracking down, and I will look into that and don't raise it  
25 with the judge yet because I don't know if we have a

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1 disagreement. That would have been a better way to resolve  
2 this.

3 MR. SAVITSKY: Your Honor, this Portcullis was  
4 actually raised in our last letter for the prior conference,  
5 and we asked for these documents, and we did tell them last  
6 week that we had an issue with this. But --

7 THE COURT: Well, I'm not interested in blame games;  
8 I'm interested in progress. So the resolution of this is  
9 Ms. Conroy is going to track it down and produce what she  
10 finds, and if you're unhappy, then you'll talk to her about it  
11 before you bother me about it, and if it's unresolved after all  
12 that, then you'll tell me.

13 So I think we've dealt with your issues. Was there  
14 anything else in your letter?

15 MR. SAVITSKY: Yes, your Honor. It was just those two  
16 issues.

17 THE COURT: Okay.

18 If that's true, then why did I get a five-page letter?  
19 Page 4 of which just to make somebody look bad, is that the  
20 idea? That's not really helpful, frankly. This whole section  
21 about the Wangs offered contradictory sworn accounts of their  
22 access to information, that little section on page 4, I don't  
23 get why that's in this letter.

24 MR. SAVITSKY: Your Honor, it's in the letter because  
25 what we've been trying to do is apprise the Court there is a

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1 reason to believe that evidence was spoliated, and in discovery  
2 proceeding, that is relevant to the demands that we're seeking,  
3 the types of documents that we're seeking, and the  
4 interrogatories that we're asking for. So it's put in for  
5 background. We're not here --

6 THE COURT: I'm not interested in background. I'm  
7 only interested in being told where there are disputes that the  
8 Court needs to resolve. I'm not interested in background.

9 If there's going to be spoliation issues here, they're  
10 going to come up, presumably, either at the end of discovery or  
11 in motions in limine before Judge Keenan in advance of trial,  
12 whenever that's going to be. At the rate we're going, it's  
13 going to be years away still. Let's just leave it at that.

14 I will just say in the future, utilize the submissions  
15 to the Court solely for the purposes of adjudicating disputes,  
16 framing what the dispute is, and then leaving it for me to be  
17 prepared, so I know what I should be asking you all about.

18 We're done with that. Now, Ms. Conroy, we have your  
19 letter, but I have concerns about it for the reasons I've said  
20 earlier. Let me start by asking this: Are there really 1100  
21 search terms that you all are fighting about?

22 MS. CONROY: I would -- if I could take us back, I  
23 don't know that we're fighting. The majority of the search  
24 terms, your Honor, are the artwork on the Appel Inventory and  
25 the corresponding artists, the Chinese translation. That's

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1 literally the bulk of the search terms. Unfortunately, there  
2 are a lot of them.

3 The rest of the search terms, in large part, which are  
4 roughly, then, just a couple of hundred, are names, most of  
5 which appear in plaintiffs' complaint. One way or the other, I  
6 gave the categories. If there was a wholesale dispute about  
7 the categories -- and what I got told is there wasn't enough  
8 time. We need more time to assess that.

9 So I don't know that there are disputes about the  
10 search term lists because that's not what was told to me. What  
11 was told to me is that I haven't had a chance to really look  
12 through this, I've got to think about it.

13 THE COURT: Okay.

14 MS. CONROY: But the categories really fall, your  
15 Honor -- there are two categories. There's the Appel Inventory  
16 list with the corresponding artists, sometimes there's  
17 variations of those names, and then the Chinese translations of  
18 both the paintings and the artists, and then really the smaller  
19 subset, which is more your traditional search terms, shall we  
20 say, most of which, I'd say 80 percent, are names of people at  
21 issue in this case.

22 THE COURT: Okay. Well, I asked that just because if  
23 it's sort of indicative of how broad everything is, it's going  
24 to be very hard for the Court to kind of navigate through  
25 things. If it is sort of straightforward like that, then that

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1 strikes me as the sort of thing you all should just be able to  
2 work out, because both sides are going to want to have whatever  
3 may exist with respect to the artwork that's in question here.  
4 Certainly, in the main action, even if the second action is  
5 dismissed, it's still going to be front and center, no?

6 MR. SAVITSKY: No, your Honor. It wouldn't be front  
7 and center because there are 500 works on this Appel Inventory  
8 list. Not everything was owned by C.C. Wang, not everything  
9 was even in contest. They make the representations that  
10 everything on the Appel Inventory was something that was part  
11 of the estate or should have been part of the estate. That's  
12 just not true.

13 So to put in 1100 or a thousand search terms, a lot of  
14 which is in Chinese, is overly burdensome. It is a fishing  
15 expedition. They're going out, and they're saying we want you  
16 to search for these thousand terms, and with the Boolean  
17 connectors, in 26 days because our responses to their document  
18 demands would be due by March 15th, your Honor. We just got  
19 these terms five days ago.

20 THE COURT: Who are the custodians that you're going  
21 to be searching through?

22 MR. SAVITSKY: We would be searching through Yien-Koo  
23 Wang King's emails.

24 THE COURT: So one custodian?

25 MR. SAVITSKY: We haven't had a meet-and-confer on the

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1     custodians.

2             THE COURT: Look, I'm not going to preempt that  
3     process. You all are going to work through those issues.

4             I just picked that randomly because, in skimming your  
5     estate papers, you say 1100 search terms, 73 document demands,  
6     19 more interrogatories, all were served on February 12th.  
7     That's overly burdensome, all of that should be stayed because  
8     we have a meritorious motion.

9             MR. SAVITSKY: Well, the search terms came only last  
10    week, not February 12th. But the document in the  
11    interrogatories were February -- yes, your Honor.

12            THE COURT: My point is what you're arguing in your  
13    motion for a stay is, now that we see what it is, as you said,  
14    it's overly burdensome, Judge, right?

15            MR. SAVITSKY: That's correct.

16            THE COURT: That's what you're saying to Judge Keenan  
17    in the first instance in these papers.

18            But I'm more in the weeds than Judge Keenan is about  
19    how document discovery is otherwise proceeding here, and I want  
20    to take ownership of all of that here. He'll make the broader  
21    call as to whether he is going to revisit the stay that he only  
22    imposed in a limited fashion or not. I assume he'll do that in  
23    the first instance.

24            My job is, unless the status quo changes, you have  
25    obligations to produce in a 2018 lawsuit until you're told



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1 otherwise, but you don't have obligations if they are overly  
2 burdensome and you can convince the Court that they are overly  
3 burdensome.

4 MR. SAVITSKY: They absolutely -- they are, your  
5 Honor.

6 THE COURT: Okay. Well, we're not going to have that  
7 discussion front and center today. We're going to have it  
8 later this month, okay? Because between now, March 4th, and  
9 March 15th, you all are going to have more than one  
10 meet-and-confer, I suspect, to try and sort some of this out,  
11 and especially in light of the admonition I expressed at the  
12 outset of this conference, which is you can't be assuming  
13 you're going to get further extensions for anything in this  
14 case. And the timelines are going to overtake you all, so you  
15 have to be pragmatic. Both sides are going to have to make  
16 choices, maybe choices you're not going to even like. You  
17 probably haven't even started thinking about depositions yet.  
18 I suggest you start thinking about them. It's March 4th.  
19 You're 60 days away from the end of fact discovery. You all  
20 need to sit down and make a schedule for when depositions in  
21 April are going to take place.

22 Have you done that yet?

23 MR. SAVITSKY: We haven't, your Honor.

24 THE COURT: You better do it soon. I'm serious. This  
25 is not hopscotch, this is not dominoes, this is litigation in

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1 federal court, in a lawsuit that's been pending for a long  
2 time. We're not going to kick the can down the road here. You  
3 people need to figure out what you are going to do in the  
4 limited time you have. Okay? Make your best calls, fight  
5 about the things that matter the most, but be forewarned: You  
6 cannot unilaterally choose not to respond or to do certain  
7 things that are contrary to what the state of the court-ordered  
8 record is here. So you all can't just say, well, we made an  
9 application for a stay, and until it's decided, we're not going  
10 do anything. Absolutely not. That is a violation of a court  
11 order, and you could be sanctioned for it.

12 Am I clear about that?

13 MR. SAVITSKY: Absolutely, your Honor. But that is  
14 not -- I push back on that representation that that was our  
15 position at the meet-and-confer. It wasn't, your Honor. Our  
16 representation was that these things were overly broad and it  
17 was premature to discuss the first four pages of her letter.

18 THE COURT: Okay, that's fine. So between now and  
19 March 15th, you all have to sort this all out and make your  
20 best professional judgments about it, and we'll have a  
21 conference before the end of this month to take stock of where  
22 you are and make sure you're on track. That's my  
23 responsibility. Okay? So we're going to do that the last week  
24 of March.

25 Now, Ms. Conroy, let's go back to your letter and the

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1 first four pages, some of which, I gather, technically are not  
2 due until March 15th, but you would argue some of which are  
3 overdue because they overlap with things that you previously  
4 requested that haven't been produced; is that correct?

5 MS. CONROY: Yes, your Honor.

6 THE COURT: Okay.

7 What efficiencies are there between now and the 15th  
8 of March for me to direct some intermediate production? That's  
9 effectively what I could be doing, right?

10 MS. CONROY: Yes, your Honor.

11 THE COURT: Okay. How would that advance things?

12 MS. CONROY: Well, your Honor, with all due respect,  
13 we agree that obviously we have to advance the ball, but we  
14 can't get any traction or willingness to produce any documents  
15 relating to our action. So if they're willing to meet with us  
16 and produce some documents, great. But if the position is  
17 going to be maintained, well, this is irrelevant, all this, I'm  
18 not going to produce it any which way other than a motion to  
19 compel. I'm not sure what more we can do.

20 THE COURT: Well, you're going to have these  
21 conversations between now and March 15th. If documents haven't  
22 been produced, either responsive to your first set of requests  
23 or the most recent set of requests, when we meet the last week  
24 of March, you will have itemized for me everything you think  
25 that is not overly burdensome or not overly broad that they

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1 have not provided to you, and Mr. Savitsky or Mr. Israel, I  
2 hope, if he's feeling better, will be here, and they're going  
3 to have to defend why they didn't produce things. And if they  
4 didn't produce certain things, then I'm going to direct them to  
5 do it, and they may be sanctioned for not doing it because the  
6 state of the record would require it.

7 MS. CONROY: Thank you, your Honor.

8 THE COURT: I want to be crystal clear about that,  
9 Mr. Savitsky, from a due process standpoint, I am putting you  
10 on notice today that if you all make judgments on your own that  
11 are not defensible and I think are sanctionable, I reserve the  
12 right to impose sanctions after the next hearing if the  
13 positions you all have taken have been inappropriate. Okay?

14 MR. SAVITSKY: Okay, your Honor.

15 THE COURT: All right.

16 MS. CONROY: I would just add that that should then,  
17 besides documents, also relate to interrogatory responses. The  
18 same position was taken with regard to interrogatory responses,  
19 that the only answers they had to provide responses for went to  
20 their affirmative action as opposed to the Wangs' affirmative  
21 action.

22 THE COURT: They cannot take the position that they  
23 only respond to their affirmative action. However, another  
24 thing that I read in quickly perusing the papers is that they  
25 are arguing, among other things, that you are utilizing

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1 interrogatories as a backdoor way of trying to get information  
2 that you otherwise can't yet get that would be obtained only  
3 through depositions. So I will scrutinize carefully whether  
4 your interrogatories really comply with Rule 33.3, which, as  
5 you know, really limit what you can obtain by interrogatory and  
6 whether what you're seeking is better obtained or more  
7 efficiently obtained through deposition discovery, which Judge  
8 Keenan has, in fact, stayed until he adjudicates, presumably,  
9 the motion.

10 What I anticipate potentially happening is: If he  
11 adjudicates the motion and denies it, then there will obviously  
12 have to be some limited period of time where deposition  
13 discovery, which has been stayed, can proceed with respect to  
14 your claims in the second action. But unless and until that  
15 happens, there won't be deposition discovery as to your claims,  
16 but you all have to schedule the depositions with respect to  
17 the first action. And I'm confident that if I made you hand in  
18 today by 5:00 o'clock -- I'm not doing this -- but if I made  
19 you hand in today a list by 5:00 o'clock of who each side was  
20 going to depose, today, knowing what you know, and having what  
21 you already do have, given the history of this case, you could  
22 both come up with ten people that you wanted to depose, which  
23 is all you get under the rules.

24 So let's not overlitigate all this stuff. You know  
25 what you need to do here. That's what you need to do. And

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1 we're dealing with people whose memories fade, and each year  
2 that goes by makes it harder to litigate the case. So that's  
3 why I'm so adamant about really holding your collective feet to  
4 the fire here and your having to live with whatever the record  
5 is. When you write your letter on May 1st saying, Judge, we  
6 heard everything you said back in January, and March, and  
7 whenever else, but we still want more time, I'm fairly  
8 confident the answer is going to be, sorry, but, no, for all  
9 the reasons I've been saying every time around. So you really  
10 can't count on it.

11 Now, if Mr. Israel is really unwell, to the point that  
12 it is so hamstringing their ability to both litigate  
13 affirmatively and defend, that is certainly something I will  
14 account for. That -- I want to be crystal clear about that,  
15 and I want you to please tell Mr. Israel that I wish him a  
16 speedy recovery, and I hope that this situation doesn't  
17 interfere with his health. So I will certainly do everything I  
18 can to accommodate that, within reason and fairness to  
19 everybody, just as if Ms. Conroy or Mr. Kelly had either  
20 personal or family circumstances that dictated that. I am the  
21 first person who will always accommodate that.

22 That said, leaving that to the side, we have to really  
23 march forward in this case.

24 So I think at least as to some of what's in your  
25 letter to me, we are going to revisit this after March 15th and

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1 after your meet-and-confers to see what really is unproduced  
2 and outstanding, and you can't assume you're not going to have  
3 any obligations, Mr. Savitsky -- you are -- and you better get  
4 with Ms. Conroy and Mr. Kelly in the next few days and say what  
5 I said the last time, which is, what do you really want and how  
6 can we most efficiently produce it? Because I want to see  
7 progress.

8 So what can we do other than the long litany of D&C,  
9 which is documents and communications, I'm guessing? That's  
10 not an abbreviation I've ever heard.

11 MS. CONROY: Sorry. I know it wasn't defined.

12 THE COURT: It was not defined, but my law clerk and  
13 I --

14 MS. CONROY: Sorry.

15 THE COURT: -- figured it out, I think, if that's what  
16 it was. It must be a big firm law speak or something.

17 MS. CONROY: Or it could just be my shorthand  
18 forgetting to define it, which is more likely than not.

19 THE COURT: That's fine.

20 What else is outstanding today that I can adjudicate?

21 MS. CONROY: Well, the initial disclosures, your  
22 Honor.

23 THE COURT: So what's the story with that,  
24 Mr. Savitsky?

25 MR. SAVITSKY: The story with that, your Honor, is

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1 that we served the initial disclosures in our affirmative  
2 action, and then we were told on -- at the last  
3 meet-and-confer, for the first time, they said, hey, we never  
4 got initial disclosures for --

5 THE COURT: We talked about it at the last conference.  
6 So that was before what you're talking about, isn't it?

7 MR. SAVITSKY: It is, your Honor.

8 THE COURT: I thought I directed the initial  
9 disclosures by a date certain. Wasn't it January 31st? Am I  
10 misremembering?

11 MS. CONROY: Yes, your Honor.

12 MR. SAVITSKY: You did, your Honor.

13 THE COURT: How come they weren't produced?

14 MR. SAVITSKY: Well, your Honor, we sent the initial  
15 disclosures in our affirmative case, and we had -- there was  
16 oversight that there was no initial disclosures in their  
17 affirmative case.

18 THE COURT: So when are you going to produce them?

19 MR. SAVITSKY: By the end of the week.

20 THE COURT: All right. By Friday, at noon. Okay?

21 MR. SAVITSKY: All right.

22 THE COURT: Life goes on. You're not going to lose  
23 sleep over not having them until Friday.

24 MR. KELLY: Of course not, your Honor. But we have  
25 asked for them in the interim since the last -- since the due



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1 date, and, your Honor --

2 THE COURT: I'm not interested. With all due respect,  
3 I'm not interested. Friday, at noon. If you don't get them  
4 Friday at noon, you can seek sanctions. Okay?

5 MS. CONROY: Thank you, your Honor.

6 THE COURT: All right.

7 What else?

8 MS. CONROY: Next is the inspection. Your Honor, you  
9 may recall, at our last conference, at the very end, I raised  
10 that. Along with our initial document requests, we had also  
11 put in a request for inspection of artwork.

12 THE COURT: Right.

13 MS. CONROY: We had informally -- either party had  
14 informally -- us included -- put it in our last set of letters.  
15 Your Honor gave his general thoughts about what a framework  
16 should be like and some instructions that you thought might be  
17 helpful to us, but, ultimately, tabled the issue and said,  
18 look, try to work it out, and if you can't, bring it back up to  
19 me. That's where we're at.

20 We asked about an inspection, if plaintiffs' counsel  
21 would be willing, both -- we would be willing, and we got told  
22 no. Hence, the reason why we're here today asking for that  
23 relief, your Honor.

24 THE COURT: Well, let me ask this question: The  
25 inspection should take place before depositions, I assume?

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1 MS. CONROY: We would like to, yes.

2 THE COURT: Is it necessary for purposes of  
3 depositions? In other words, from a sequencing standpoint,  
4 explain to me why you physically need to inspect artwork in  
5 advance of depositions as opposed to physically inspect after  
6 depositions.

7 MS. CONROY: Well, your Honor, without getting too  
8 much into the weeds, with regard to a lot of the names of these  
9 artwork, your Honor, there are variations for the translations,  
10 and as we've been told by more than -- not just our clients,  
11 but experts, to really be able to identify and know specific  
12 artwork in question, you have to see the artwork.

13 THE COURT: Right. But my question, in part, is, and  
14 maybe I should have been a little clearer about this: Do you  
15 need the inspection for purposes of expert discovery as opposed  
16 to for purposes of fact deposition discovery? That's my  
17 question.

18 MS. CONROY: Well, definitely for expert discovery. I  
19 think for fact -- it should definitely come in for fact  
20 discovery, and I'll split that in two.

21 Focusing on the Kings' case against my clients, your  
22 Honor, I think that there have been a lot of representations  
23 about the exchange of artwork, artwork owned, who had what, and  
24 there's a history of representations made by both our clients,  
25 to be quite honest with you. So I do think that for purposes

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1 of the depositions of both parties, the artwork in question and  
2 the artwork in their possession is actually a key fact.

3 Now, one could argue, well, you can get their  
4 testimony, and look at it after, and impeach them, I hear that,  
5 but we would like to see it in the first instance.

6 As to our affirmative action, I think it's just the  
7 other side of the same coin. There's representations about  
8 artwork that's in her possession, or plaintiffs' possession,  
9 that she claims to have we think have been divested, there's  
10 claims about who owns what artwork and in whose possession it  
11 is. So we would like, before the depositions, since that was  
12 never an option in any of the surrogate court actions -- your  
13 Honor, this isn't discovery that was taken in the past -- we  
14 would like, in this first instance because we are here and this  
15 is a federal case, to have that opportunity.

16 THE COURT: But I guess as I'm listening to you talk,  
17 it makes me more convinced that the inspections should take  
18 place after the depositions, not before that, because you  
19 already have inventories. It's not like you don't know what  
20 the paintings are, right? The question is: Where are they,  
21 how did they get there, what transactions underlay the various  
22 paintings? That's what you all are fighting about, right?  
23 Isn't that right?

24 MS. CONROY: Yes. I mean, that's -- yes, your Honor.

25 THE COURT: So, in the depositions of Mr. Wang and of

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1 Ms. King, among others, you're going to go through at length, I  
2 assume, all the inventory, if you will, and where they're  
3 located, and how long they've been kept there, and all of that.  
4 So the facts related to the inspections that need to take place  
5 will, I think, potentially come into greater clarity as a  
6 result of the questions at depositions than they would if you  
7 did the inspections ahead of the depositions. Is that not  
8 right?

9 MS. CONROY: I can definitely see the utility in that,  
10 your Honor. Like I said, our position was wanting to see --  
11 because there have been so many prior representations about  
12 artwork in both parties' possession, but if it's after-the-fact  
13 depositions, we'd be fine with that, too. We just want an  
14 agreement on actually inspecting the artwork.

15 MR. SAVITSKY: Your Honor, we don't have agreement on  
16 inspection. Again, I need to clarify certain points. When you  
17 asked if that was correct about isn't everyone trying to find  
18 out where the artwork is, and counsel said yes, but my answer  
19 is, no, it's not.

20 THE COURT: Your answer is no, it's not for your  
21 lawsuit?

22 MR. SAVITSKY: Or theirs.

23 THE COURT: Her answer is, yes, it is for her lawsuit.  
24 So you're disagreeing because your positions are different  
25 because your claims are different.

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1 MR. SAVITSKY: I'm disagreeing because their claims  
2 are -- the only claim they have for recovery is because of the  
3 probate trial. They say that the probate trial ended the wrong  
4 way, there was fraud related to it. That is their only RICO  
5 act that they claim happened in the past ten years. And  
6 whether or not the trial is a RICO act, which we argue it can't  
7 be, as a matter of law, based off a 2018 Second Circuit opinion  
8 that said -- I won't get into it, but the point is, your Honor,  
9 that even under their lawsuit, who owns what does not recover  
10 them damages. They claim that the fraud, the predicate act  
11 that they want recovery on was the probate trial. What  
12 paintings YK received or -- YK as in Yien-Koo King, or Kenneth  
13 King, or anyone else received between 1997 and 2003 is utterly  
14 irrelevant, and it's hugely expensive.

15 This investigation, the on-site inspection, has to  
16 happen in the People's Republic of China. It may have to  
17 happen in Taiwan, or Macau, or wherever -- the other countries  
18 that they listed. It has nothing to do with their claims, and  
19 they want to take us to China. This is not just me speaking on  
20 our meet-and-confer. They said, well, we have to investigate  
21 what's being stored in China. This case will go on for another  
22 decade. It's already been going on for 19 years, it will go on  
23 for another ten if we just look at this 500-painting bucket of  
24 potential artwork and start looking at every transaction for  
25 those paintings, even though their only predicate act happened

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1 in the probate court in relation to the trial.

2 MS. CONROY: Let's put the RICO action aside. I think  
3 counselor forgets we have more than a RICO action. The  
4 simplest -- the easiest version of this is the conversion  
5 claim, your Honor. We have specific allegations that artwork  
6 that was in dispute, that is artwork of the estate, recently  
7 got disposed of by plaintiff, your Honor. So this isn't only  
8 about the RICO action; this is legitimately and specifically  
9 about artwork -- disputed artwork on the Appel Inventory that  
10 had been represented by plaintiff as being in her custody,  
11 which, as we attached to our letter, your Honor, the  
12 Surrogate's Court judge just recently stripped his client of  
13 her role as fiduciary over there pending this allegation and  
14 found that the allegations and the facts as asserted make it  
15 more likely than not that she has violated the TRO and gotten  
16 rid of -- recently gotten rid of estate assets.

17 THE COURT: You're litigating that in the Surrogate's  
18 Court. Why do I need to worry about that in the federal  
19 lawsuit?

20 MS. CONROY: Well, in the federal lawsuit, your Honor,  
21 we're also arguing conversion. She's taking the position she  
22 has certain things; we take the position she doesn't. I think  
23 it's our right to be able to inspect the artwork about what she  
24 has and what she doesn't have.

25 THE COURT: Beyond the 98 paintings?

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1 MS. CONROY: It is the 98 paintings. The 98  
2 paintings, your Honor. Definitely the 98 paintings in dispute,  
3 but we think there's more.

4 MR. KELLY: Can I clarify?

5 THE COURT: No, you can't, and you can all sit down.

6 We're not going to rule on when the inspections are  
7 going to take place today. I'm not ordering any inspections to  
8 take place today. We're going to revisit this after fact  
9 discovery is over. Then we'll see what the state of play is  
10 because if your lawsuit has been dismissed, you're certainly  
11 not getting inspections, and your lawsuit might get dismissed,  
12 Ms. Conroy.

13 So I think, in order to let that process run its  
14 course, and also because I'm not convinced that there is any  
15 particular need to have inspections in advance of these fact  
16 discovery depositions -- I can see how they may be relevant for  
17 expert discovery depositions, but we're not there yet -- so I'm  
18 not going to opine today that the inspections need to take  
19 place by this date certain. You've got enough to do between  
20 now and May 8th. You're not taking trips to China to go look  
21 at warehouses or something. You all know what art is in play  
22 here. You've been making applications in the Surrogate's Court  
23 about particular pieces of art. You don't need to go somewhere  
24 to see where they are. I don't see why you need to do that in  
25 advance of the depositions you're going to take of Ms. King or

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1 that Ms. King needs to know where things are in advance of any  
2 depositions of Mr. Wang at this point. You're going to have to  
3 live with that state of play, as far as I'm concerned, because  
4 I think that's factually unnecessary and allows the case  
5 organically, if I can say it that way, to evolve more naturally  
6 without expenses being incurred that may be unnecessary.

7 So we're going to have to revisit the timing of the  
8 inspections, but I'm not going to impose some deadline on that  
9 today. I find that every time you all get all hot under the  
10 collar about this, you all stand up at the same time and  
11 practically start yelling on top of each other whenever we get  
12 to this subject, so I'm not going to sort that out today,  
13 because I think the record needs to be more fully developed on  
14 that point. And I think when we get to that point, it may be  
15 that you're required to submit something beyond just a  
16 paragraph in a letter. It may be that you all have to tie the  
17 legal claims you each have to justify why you physically need  
18 to travel all over the world to physically have lawyers see  
19 certain things. I really need to understand that a lot better  
20 than I do today from the very modest submissions that have been  
21 made by the parties in the correspondence to the Court to date.

22 So I'm not going to rule on any of that today, and I  
23 think you should assume that you are not going to get  
24 inspections until after May 8th when fact discovery is over. I  
25 think that's how we're going to proceed, unless you make some



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1 more detailed showing of how there's going to be prejudice in  
2 advance of the conclusion of fact discovery in the 2014 action  
3 if two-way inspections don't take place. And it hasn't been  
4 made to date, so if you want to make an attempt to do that, you  
5 can, but short of that, I'm not going to rule on that until  
6 after fact discovery is completed and we sort of take stock of  
7 where we are at that point.

8 Okay?

9 MS. CONROY: Okay. Thank you, your Honor.

10 THE COURT: All right.

11 Anything else you want to raise today?

12 MS. CONROY: No. I think counsel already said that we  
13 have an agreement now on the surrogate court prior productions,  
14 so I don't think anything other than -- I guess going to your  
15 Honor's point -- excuse me, going to your Honor's point about  
16 trying to advance the ball: We were just trying to set some  
17 internal deadlines by which the parties had to have come to  
18 their positions with regards to categories of documents or  
19 search terms for us to come back, but it sounds like your Honor  
20 is already going to set deadlines and set another conference  
21 for us --

22 THE COURT: We're going to have another conference the  
23 last week of March. And I expect, and hope, frankly, you'll  
24 tell me we don't need it because you've worked things out, but  
25 that's probably delusive on my part to think that way. But

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1 there has to have been production between now and then, and if  
2 there isn't, you'll bring it to my attention, and we'll deal  
3 with it. And as I said to Mr. Savitsky, there may be sanctions  
4 unless -- if there's been a lack of production that can't be  
5 justified, then there will be sanctions. So we have got to  
6 move this forward. What I would say is between now and the  
7 next conference, you should establish your deposition schedule  
8 between now and May 8th. And you need to, I gather, finalize  
9 your Surrogate's Court document collection process, and you  
10 need to work through all the outstanding discovery, you're  
11 going to make your Rule 26 disclosures by Friday, and there are  
12 outstanding interrogatories, and there are outstanding document  
13 requests, and you need to -- frankly, you should go sit in the  
14 jury room when we're done today and have a face-to-face, if you  
15 have time to do that. I would start by doing that, and let you  
16 stay here if you'd like.

17 But you really need to be talking to each other. I  
18 know Mr. Savitsky has to talk to Mr. Israel about some of these  
19 things, and if his health continues to be ailing, then I'll  
20 deal with that if there's some application that is generated by  
21 that, but that's the only thing, as far as I'm concerned from  
22 what's in front of me, that would necessitate changing any of  
23 the framework that we have in place right now.

24 Let me ask Mr. Tam when we can see you the last week  
25 of March.

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(Pause)

THE COURT: Can we do three weeks from today, the 25th, in the afternoon?

MR. SAVITSKY: Okay.

MS. CONROY: I believe that's fine, your Honor.

THE COURT: So why don't we say 2:30 on March 25th. That way, Mr. Tam gets to see you before he goes on vacation, and he loves these conferences.

MS. CONROY: I'm sure he does.

THE COURT: All right. So I think we're done for today.

With respect to the March 25th conference, then I would want you to submit, I'll say -- realistically, you have until the 15th, and then I would want you to talk instead of just running to me. So you're going to talk on the 18th or 19th after you get things. So I guess we'll say the 21st?

MS. CONROY: Sure.

THE COURT: Okay?

So any pre-March 25th conference letters in which you want to identify what the agenda is going to be, you should submit by the 21st. And then we'll do our best to get up to speed and see what you've told us.

Anything else for today?

MR. SAVITSKY: No. Thank you, your Honor.

MS. CONROY: No, your Honor.

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1 THE COURT: Okay. Have a great day, and I hope  
2 Mr. Israel feels better.

3 MR. SAVITSKY: Thank you. I appreciate that.

4 \* \* \*